SBCivil Writ Petition No.5629/1992

Nawal Kishore & Ors.
V.
Municipal Board, Deedwana

Date of Order :: 23rd May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sunil Mehta, for the petitioners.
Mr. C.R.Jakhar, Dy.Govt.Advocate.

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By this petition for writ validity and propriety of the order dated 24.9.1992 passed by the Administrator, Municipal Board, Deedwana is questioned whereby the Administrator cancelled the sanction granted to the petitioners to raise construction and also treated the pattas granted by Gram Panchayat, Gadhadham as void.

The facts giving rise to instant petition for writ are that one Shri Kanhaiyalal Gattani being khatedar tenant of agricultural lands bearing khasra Nos.1125, 1146, 1147, 1166, 1167, 1168 and 1169 submitted 65 applications to the Gram Panchayat, Gadhadham for issuing patta of his khatedari agricultural land. The Gram Panchayat by acting upon the application submitted by aforesaid Shri Kanhaiyalal issued various pattas in his favour including three pattas which are subject matter of this petition for writ.

It is stated by petitioner No.1 Shri Nawal Kishore that he was having possession over the land in dispute even during lifetime of Shri Kanhaiyalal, therefore, after his death the successors of Shri Nawal Kishore executed a deed acknowledging that they had no subsisting right, title and interest in the property and all the rights pertaining to the land in question vest with Shri Nawal Kishore. Shri Nawal Kishore then by an agreement dated 11.10.1990 executed in favour of the petitioners No.2 to 4 agreed to sale the property to them and the possession of the land was also delivered by him to the petitioners No.2 to 4. On the basis of agreement dated 11.10.1990 the petitioners No.2 to 4 are said to b e having occupation over the land in dispute.

The petitioner No.1, on behalf of Shri Kanhaiyalal Gattani, in the year 1985 submitted an application to the Municipal Board, Deedwana for raising construction on the land in question as the land after merger of Gram Panchayat, Gadhadham with Municipal Board, Deedwana became part of it. The petitioner No.1 also deposited required fee with Municipal Board on 18.1.1986. An another application was submitted by petitioner Shri Nawal Kishore on behalf of Shri Kanhaiyalal Gattani in the year 1987 seeking permission to raise construction. The petitioners No.2 to 4 also submitted application for raising construction in the month of October, 1990

before the Municipal Board, Deedwana. At first instance the permission was granted to the petitioners to raise the construction, however, ultimately by order dated 24.9.1992 the Administrator, Municipal Board, Deedwana found that the land occupied by the petitioners was not Abadi land and, therefore, the Gram Panchayat, Gadhadham was not having any jurisdiction to issue pattas in favour of the petitioners, therefore, the permission granted was cancelled and the land in dispute was ordered to be treated as municipal land.

The Executive Officer, Municipal Board, Deedwana in compliance of the order dated 24.9.1992 by order dated 26.9.1992 restrained the petitioners No.2 to 4 from raising any construction on the land in question. Being aggrieved by orders dated 24.9.1992 and 26.9.1992 instant petition for writ is preferred by the petitioners.

During the course of hearing the Court directed petitioner No.1 Shri Nawal Kishore to apprise the date of death of Shri Kanhaiyalal Gattani. The petitioner No.1 in pursuant thereto filed an additional affidavit on 16.5.2006. In the affidavit it is stated by the petitioner No.1 that Shri K.N.Gattani passed away somewhere in July, 1978. The petitioner NO.1 also placed on record a copy of the condolence resolution dated 10.7.1978 adopted by Shri Gopal

Gaushala Trust, Deedwana to console the family of Late Shri Gattani who died at Calcutta. In view of the additional affidavit referred above even according to the petitioner No.1 in the year 1985 and 1987 when he submitted application to raise construction at the land in dispute on behalf of Shri Kanhaiyalal Gattani, Shri Gattani was not living. Counsel for the petitioners utterly failed to satisfy the Court as to in what capacity and under what circumstances the petitioner No.1 in the year 1985 and then in the year 1987 sought permission from the Municipal Board, Deedwana on behalf of Shri Kanhaiyalal Gattani for raising construction. It is the position admitted that the petitioner No.1 moved application seeking permission to raise construction on behalf of Shri Kanhaiyalal after his death. The mischief on part of the petitioner No.1, therefore, is writ large.

The petitioners also placed on record a document Anx.7 which is said to be executed on 24.9.1990 by Shri Sriniwas Gattani, Ramniwas Gattani and Shri Vallabh Gattani, all sons of Shri Kanhaiyalal Gattani whereby all the rights vested with them being legal heirs of Late Shir Gattani were transferred to petitioner No.1 Shri Nawal Kishore. The document pertains to transfer of rights pertaining to immovable property cost of which is though not shown in the document but is certainly more than Rs.100/- as the petitioner No.1 himself further transferred the land

to the petitioners No.2 to 4 with a consideration of Rs.17,000/-. The document Anx.7 is not a document registered one. The petitioner No.1 has utterly failed to satisfy the Court as to how he acquired rights with regard to land in dispute on basis of a non registered document Anx.7 dated 24.9.1990.

It is urged that in fact the land in question was in possession of the petitioner No.1 even during the life time of Shri Kanhaiyalal, therefore, all the rights and interest pertaining to the land in question were vesting with him and only this fact was acknowledged by the document Anx.7. I am not at all satisfied by the explanation given as above simply for the reason that if it was so then the petitioner No.1 could have get such acknowledgment during the life time of Shri Kanhaiyalal. Even if it is assumed that Shri Kanhaiyalal and his successors lost their interest in the land in dispute then too it does not feed any right or interest in favour of the petitioner No.1. By possession over the land he could be treated at the most a trespasser.

The petitioner No.1 agreed to sale the land in dispute by showing the same as his own “Milkiyat” to the petitioners No.2 to 4 by agreement Anx.8 (collectively) dated 11.10.1990. The petitioner No.1 himself was not having any valid title with him with regard to land in dispute, therefore, the agreement to

sale of the land in dispute by document Anx.8 is also of no consequence.

The conduct of the petitioner No.1 on face is mischievous as by adopting fraudulent tactics he submitted application for raising construction on behalf of Shri Kanhaiyalal Gattani quite later to his death before the Municipal Board, Deedwana. He further entered into an agreement for sale of the land without having any right thereon. A person with such a conduct is not entitled to invoke extra ordinary jurisdiction vested with this Court under Article 226 of the Constitution of India. The writ petition on basis of conduct of the petitioner No.1 deserves to be dismissed qua him.

The petitioners No.2 to 4 are also not entitled for any relief under Article 226 of the Constitution of India as the petitioner No.1 was having no valid title of the land to transfer it to them, as such they are also not having any right as claimed in this petition for writ.

The writ petition, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.